



## House Amendment to the Senate Amendments with an Amendment to H.R. 644—Trade Facilitation and Trade Enforcement Act (Rep. Reed, R-NY)

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**FLOOR SCHEDULE:** SCHEDULED FOR CONSIDERATION ON JUNE 12, 2015 SUBJECT TO A [RULE](#). **NOTE:** H.R. 644 WAS ORIGINALLY INTRODUCED AS THE FIGHTING HUNGER INCENTIVE ACT, BUT BECAME THE VEHICLE IN THE SENATE FOR THE TRADE FACILITATION AND TRADE ENFORCEMENT ACT OF 2015.

**TOPLINE SUMMARY:** The House amendment to [the Senate amendment to H.R. 644](#) would authorize and establish U.S. Customs and Border Protection (CBP), would include additional provisions related to the objectives in Trade Promotion Authority legislation, including provisions on intellectual property rights protection, antidumping and countervailing duty orders, and currency manipulation.

**CONSERVATIVE CONCERNS:** There are no major conservative concerns.

- **Expand the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

### **DETAILED SUMMARY AND ANALYSIS:**

**Trade Facilitation and Trade Enforcement:** Section 101 would require the Commissioner of U.S. Customs and Border Protection to work with the private sector and other federal agencies to ensure that all agency partnership programs provide trade benefits to participants. The commissioner is mandated to ensure that U.S. Customs and Border Protection partnership programs established before the date of the bill's enactment, such as the [Customs-Trade Partnership Against Terrorism](#) and partnership programs of U.S. Customs and Border Protection established on or after such date of enactment, provide trade benefits to private sector entities that meet the requirements for participation in those programs.

Section 103 would require the CBP to establish key performance measures and requires reports to Congress on modernization, facilitation, and trade enforcement functions, in consultation with the House Committees on Ways and Means and Finance, with respect to the implementation of the Automated Commercial Environment (ACE), drawback modernization, in-bond merchandise movement, collection of antidumping and countervailing duties, expedited clearance of cargo, and [Centers for Excellence and Expertise](#).

**COST:** The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) [estimate](#) that the House amendment to the Senate amendment to H.R. 644 would decrease the deficit by \$3 million over the 2015-2024 period. CBO and JCT estimate that the amendment would reduce mandatory spending by \$4 million and reduce revenues by \$1 million over the same period.

Section 105 would additionally require CBP and Immigration Customs Enforcement (ICE) to submit to Congress a biennial joint strategic plan on trade enforcement and trade facilitation, and would require the CBP Commissioner and ICE Director to consult with appropriate officials from relevant federal agencies, the [Commercial Customs Advisory Committee](#) (COAC), relevant law enforcement agencies, international organizations, and interested parties in the private sector in developing the joint strategic plan.

Section 107 would add an information technology infrastructure and would require that the Secretary of Treasury to work with the head of each agency participating in [International Trade Data System](#) (ITDS) and the Interagency Steering Committee to ensure that each agency: (1) develops and maintains the necessary information technology infrastructure to support the operation of the ITDS and to submit all data to ITDS electronically; (2) enters into a memorandum of understanding to provide for the information sharing between the agency and CBP necessary for the operation and maintenance of ITDS; and (3) identifies and transmits to the Commissioner the admissibility criteria and data elements required by the agency to authorize the release of cargo by CBP for incorporation into the operational functionality of the Automated Commercial Environment (ACE) computer system.

Section 108 would provide the Senate Committee on Finance, the House Committee on Ways and Means, the Committee on Senate Homeland Security and Government Affairs, and the House Committee on Homeland Security with 30 days of notification before CBP initiates or enters into a mutual recognition agreement relating to supply chain or customs revenue functions, and would establish that it shall be a negotiating objective of the United States, in any negotiation for a mutual recognition arrangement with a foreign country on partnership programs, to seek to ensure compatibility with CBP partnership programs to enhance security, trade enforcement, and trade facilitation.

Section 109 would codify and expand the role of the Commercial Customs Advisory Committee (COAC), made up of 20 members representing the trade community which advises and provides recommendations to the Secretaries of the Treasury and Homeland Security on CBP's commercial operations, including modernization and streamlining of cargo processing.

Section 110 would require the Commissioner of CBP to develop and implement Centers of Excellence and Expertise (CEEs) within the CBP that ensure uniform implementation and enforcement of the laws and regulations of the United States across ports of entry, improve enforcement efforts, build upon CBP expertise in particular industry operations and supply chains, centralize agency decision making, and formalize an account-based approach to the importation of merchandise into the United States.

Section 111 would require the National Targeting Center to establish targeted risk assessment methodologies and standards for evaluating the risk that cargo destined for the United States may violate the customs and trade laws of the United States, as well as provide enforcement alerts to the ports of entry for cargo inspection; and requires that advanced trade data collected for security purposes be used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and not for any commercial enforcement purposes, including for determining merchandise entry.

Section 112 would require the Inspector General of the Department of Treasury to conduct periodic reviews of CBP's revenue protection and enforcement measures, focusing in particular on the collection of revenue from [antidumping and countervailing duties](#), assessment and collection of penalties, and adequacy of policies regarding in-bond movements of cargo.

Section 113 would require the Secretaries of Treasury and Homeland Security to jointly report on CBP improvements to internal controls over merchandise moving in-bond.

Section 114 would require the CBP to strengthen internal controls and develop criteria for assigning importer-of-record numbers, establishing an accurate database of importer of record numbers, and improving the accuracy of existing numbers.

Section 115 would authorize CBP to strengthen internal controls over “new importers” to ensure collection of revenue through risk-based bonding for duties, fees, and penalties, by establishing a new importer program that directs CBP to adjust bond amounts for new importers based on the level of risk assessed by the agency.

**Import Health and Safety:** Section 201 would establish an interagency import safety working group, chaired by the Secretary of Homeland Security, which would be required to: (1) consult on the development of a joint import safety rapid response plan; (2) evaluate federal government and agency resources, plans, and practices to ensure the safety of U.S. imports and the expeditious entry of such merchandise; (3) review the engagement and cooperation of foreign governments and manufacturers; (4) consult with the private sector to identify best practices in import health and safety; (5) identify best practices to improve Federal, state, and local coordination in responding to import health and safety threats; and (6) identify appropriate steps to improve domestic accountability and foreign government engagement with respect to imports.

Section 202 would require the Secretary of Homeland Security, in consultation with the import safety working group, to develop and review a joint import safety rapid response plan that establishes protocols and practices CBP should use when responding to cargo that poses a threat to the health or safety of U.S. consumers, and requires the CBP Commissioner to conduct exercises to test the plan in conjunction with Federal, state, and local agencies.

Section 203 would require the commissioner to ensure that CBP port personnel are trained to effectively enforce U.S. import health and safety laws. The commissioner shall ensure that CBP personnel assigned to United States ports of entry are trained to effectively administer the provisions of this title and to otherwise assist in ensuring the safety of merchandise imported into the United States and the expeditious entry of such merchandise.

**Import-Related Protection of Intellectual Property:** Section 302 would authorize and direct the CBP to share information with rights holders to help quickly ascertain whether a suspect good crossing the U.S. border at a port of entry violates a copyright or trademark, except in such cases as would compromise an ongoing law enforcement investigation or national security. Section 303 would authorize a seizure if CBP determines suspect merchandise is a [circumvention device](#), and directs CBP to notify an injured rightholder of the seizure and provide information required by CBP regulations, if the rightholder is included on a list maintained by CBP that is revised annually.

Section 304 would direct the Secretary of Homeland Security to establish a process for the enforcement of copyrights for which the owner has submitted an application for registration with the Copyright Office of the Library of Congress to the same extent and in the same manner as if the copyright were registered with the Copyright Office.

Section 305 would establish within ICE the [National Intellectual Property Rights Coordination Center](#). Section 306 would require the commissioner and Director of ICE to include in the joint strategic plan the following: (1) a description of the Department of Homeland Security’s Intellectual Property Rights (IPR) enforcement efforts; (2) a list of the top ten ports, by volume and value, where CBP seized IPR infringing goods in the preceding two years; and (3) a recommendation for the optimal allocation of personnel to ensure CBP and ICE are effectively enforcing IPR.

Section 307 would require the commissioner to ensure sufficient personnel are assigned throughout CBP with responsibility to enforce IPR with respect to U.S. imports. Section 308 would require the CBP Commissioner to

effectively train CBP port personnel to detect and identify IPR infringing imported goods, to work with the private sector to identify opportunities for collaboration with respect to training for officers of the agency to enforce IPR, consult with the private sector to identify technologies that can cost-effectively identify infringing merchandise, provide for cost-effective training for CBP officers with regard to the use of such technologies, and prescribe regulations to enable CBP to receive donations of technology and training from private sector entities for the purpose of enforcing IPR.

Section 309 would require the Secretary of Homeland Security to coordinate with competent foreign law enforcement agencies to enhance IPR enforcement, including by information sharing and technical assistance, and requires the commissioner and the ICE Director to lead interagency efforts to collaborate with law enforcement and customs authorities of foreign countries.

Section 311 would require the Secretary of Homeland Security to develop and implement an educational campaign for travelers entering or departing the United States on the legal, economic, and public health and safety implications of importing IPR infringing goods into the United States, and to ensure that all versions of [CBP Form 6059B](#), or a successor form, include a written warning to inform travelers arriving in the United States that importation of merchandise that infringes Intellectual Property Rights may subject travelers to civil or criminal penalties and may pose serious risks to health and safety.

**Improvements to Antidumping and Countervailing Duty Laws:** Section 502 would provide the Department of Commerce flexibility to select appropriate facts available or adverse facts available when a foreign party fails to cooperate with the agency's request for information in a proceeding. Section 505 would strike the requirement that a party allege that a foreign producer has made sales below its costs before the Department of Commerce initiates an investigation of sales below cost, and clarifies that the Department of Commerce can disregard prices or costs of inputs that foreign producers purchase if the Department of Commerce has reason to believe or suspect that the inputs in question have been subsidized or dumped.

**Additional Trade Enforcement Provisions:** Section 601 would require the administration to identify, in close consultation with Congress, enforcement priorities and to more regularly consult with Congress on the administration's enforcement strategy. This section directs the administration to focus its enforcement actions on addressing practices that, if eliminated, would likely have the most significant potential to increase United States economic growth.

Section 602 would allow the administration, under certain conditions, to reinstate a retaliatory action if such action has terminated previously. To reinstate such action, the administration must receive a request from an affected domestic industry and engage in a detailed analysis and robust consultations with Congress and the public.

Section 603 would require the International Trade Commission to create a web-based import monitoring tool to provide data on the volume and value of imports, and requires the Department of Commerce to provide on a website periodic reports on quarterly changes in the volume and value of imports.

**Establishment of U.S. Customs and Border Protection:** Section 802 would establish (1) the U.S. Customs and Border Protection, the Commissioner, Deputy Commissioner, and CBP operational offices; (2) require reports to Congress on CBP's Business Transformation Initiative, port of entry infrastructure needs assessments, and personal searches conducted by CBP personnel; (3) direct the Secretary of Department of Homeland Security to certify in writing prior to entering into or renewing an agreement with a foreign government for a trusted traveler program administered by CBP that such government routinely submits lost and stolen passport information of such country's citizens to INTERPOL and shares this information with the United States; and (4) establish a sense of Congress on CBP's Foreign Language Award Program (FLAP).

**Miscellaneous Provisions:** Section 904 would (1) reduce record-keeping requirements on goods returned to the United States without improvement abroad so that duties are not assessed twice; and (2) would modernize existing inventory management rules by subtracting the value of U.S. components assembled into the final product that would be entered into U.S. commerce for articles exported and returned after being improved abroad.

Section 908 would clarify that out U.S. policy identifying the importance of the bilateral U.S.-Israel trade relationship. This section states that the principal U.S. trade negotiating objectives for trade agreements with foreign countries are to discourage actions to boycott, divest from, or sanction Israel. The section also would require the president to report annually to Congress on politically motivated acts of boycott against, divestment from, and sanctions against Israel. In addition, this section would require that no U.S. court may recognize or enforce any foreign judgment by a foreign court against a U.S. person doing business with Israel, if the foreign judgment is based on a determination by a foreign court that the U.S. person's doing business with Israel constitutes a violation of law.

According to the Ways and Means Committee [overview](#), this section would combat “politically motivated acts of boycott against, divestment from, and sanctions against Israel.”

Section 909 would strike and eliminate the “consumptive demand” exception to the prohibition on importing merchandise made by convict, forced or indentured labor, and requires the commissioner to provide a report to Congress that includes: (1) the number of instances in which merchandise was denied entry during the preceding 1-year period; (2) a description of the merchandise denied entry pursuant to the section, and (3) such other information the Commissioner considers appropriate with respect to monitoring and enforcing compliance with the law.

Section 910 would extend the period that the Secretary of the Treasury may charge for certain customs services for imported goods from July 8, 2025 to July 28, 2025, and would extend the ad valorem rate for the Merchandise Processing Fee collected by Customs and Border Protection that offsets the costs incurred in processing and inspecting imports from July 1, 2025 to July 14, 2025.

Section 912 would amend the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. The section would stipulate that trade agreements do not require changes to U.S. immigration law or obligate the United States to grant access or expand access to visas. The section would also stipulate that trade agreements do not require changes to U.S. law or obligate the United States with respect to global warming or climate change. The section would further add a negotiating objective related to fisheries, stating that:

The principal negotiating objectives of the United States with respect to trade in fish, seafood, and shellfish products are to obtain competitive opportunities for United States exports of fish, seafood, and shellfish products in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports of fish, seafood, and shellfish products in United States markets and to achieve fairer and more open conditions of trade in fish, seafood, and shellfish products, including by reducing or eliminating tariff and non-tariff barriers and eliminating subsidies that distort trade.

The section would allow the Chair and Ranking Member of the House and Senate Advisory Groups to each send up to three personnel to serve as delegates to negotiating rounds. The section would clarify the negotiating objective on human trafficking to require countries to take concrete steps to address trafficking. The section further makes these amendments effective as if included in the enactment of the Bipartisan Congressional Trade Priorities and Accountability Act. ([The Bipartisan Congressional Trade Priorities and Accountability Act is scheduled to be on the House floor on June 12, 2015](#)).

Section 913 would require CBP to include in all distributions of collected antidumping and countervailing duties under the Continued Dumping and Subsidy Offset Act of 2000 any and all interest earned on such duties that is, or was, realized through any payments received on or after October 1, 2014, including interest in connection with any customs bond pursuant to a court order or judgment, or any settlement for such bond.

**Offset:** Section 915 would modify the penalty under the Internal Revenue Code that applies to a taxpayer who fails to file a tax return within 60 days of the due date, which is currently equal to the lesser of \$135 (indexed for inflation) or 100 percent of the amount required to be shown on the return. This section would increase the dollar threshold to \$205. The provision would be effective for tax returns due to be filed (including extensions) after 2015.

**The following provisions are included in the House Amendments ([#1 Ryan \(R-WI\) Substitute](#); [#6 Ryan \(R-WI\)](#)) to the Senate Amendment to H.R. 644:**

- Section 116 would require customs brokers to collect information on the identity of importers, with penalties for failure to comply. Any customs broker who fails to collect information required under the regulations prescribed under the bill would be liable to the United States for a monetary penalty not to exceed \$10,000 for each violation of those regulations and subject to revocation or suspension of a license or permit of the customs broker.
- Section 117 would require CBP to collect additional information and levy financial requirements on “nonresident importers” to increase revenue protection. The section stipulates that if an importer of record is not a resident of the United States, the Commissioner of U.S. Customs and Border Protection would not require the non-resident importer to designate a resident agent in the United States subject to the requirements described in the bill, including that the resident agent be authorized to accept service of process against the non-resident importer in connection with the importation of merchandise.
- Section 118 would require the Commissioner of CBP to establish agriculture programs, antidumping and countervailing duties, import safety, intellectual property rights, revenue, textiles and wearing apparel, and trade agreements and preference programs, as priority trade issues within CBP.
- Section 119 would define “appropriate congressional committees” as the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Homeland Security and Government Affairs, and the House Committee on Homeland Security.

**Prevention of Evasion of Antidumping and Countervailing Duty Orders:**

- Section 411 would establish the Trade Remedy Law Enforcement Division within CBP’s Office of International Trade, dedicated to preventing and investigating trade remedy evasion and directing CBP activity concerning evasion. This division would coordinate information exchange and cooperation between CBP, ICE, and other agencies regarding evasion. It would also serve as the primary contact point for evasion allegations and would be required to provide parties updates on the status and outcome of investigations or other activities resulting from allegations. The division would contain a National Targeting and Analysis Group dedicated to identifying potentially evading imports and alerting relevant ports.
- Section 412 would direct (1) the CBP to exercise all existing information collection authorities to identify evasion; and (2) authorize CBP to issue questionnaires to collect information on alleged evasion and to apply an adverse inference against a party that does not provide the requested information.

- Section 413 would authorize increased data sharing between CBP, the Department of Commerce, and the U.S. International Trade Commission for enforcement actions against evasion.
- Section 414 would direct the CBP to enter into agreements with foreign countries to increase cooperation in combatting evasion and to allow CBP to conduct overseas investigations of evasion. The Commissioner would be authorized to take into consideration whether a country is a signatory to a bilateral agreement and the extent to which the country is cooperating under the bilateral agreement for purposes of trade enforcement and compliance assessment activities of U.S. Customs and Border Protection that concern evasion by such country's exports.
- Section 415 would establish as a negotiating objective for future trade agreements the creation of arrangements with foreign countries to increase cooperation in combatting evasion and to allow CBP to conduct overseas investigations of evasion. The section states that:

The principal negotiating objectives of the United States shall include obtaining the objectives of the bilateral agreements for any trade agreements under negotiation as of the date of the bill's enactment or future trade agreement negotiations.

- Section 421 would authorize the Department of Commerce to investigate evasion of antidumping and countervailing duty orders and establishes the procedures for such investigations. In addition, the section requires CBP to provide the Department of Commerce information, and requires the Department of Commerce to send CBP the administrative record of these investigations.
- Section 431 would further direct the CBP to assign sufficient personnel responsible for preventing and investigating evasion and requires that such personnel are adequately trained. The Commissioner would be required to the maximum extent possible, ensure that U.S. Customs and Border Protection: (1) employs sufficient personnel who have expertise in, and responsibility for, preventing and investigating the entry of covered merchandise into the customs territory of the United States through evasion; (2) on the basis of risk assessment metrics, assigns sufficient personnel with primary responsibility for preventing the entry of covered merchandise into the customs territory of the United States through evasion to the ports of entry in the United States; (3) provides adequate training to relevant personnel to increase expertise and effectiveness in the prevention and identification of entries of covered merchandise into the customs territory of the United States through evasion.
- Section 433 would terminate the ability of new shippers to post bonds during Department of Commerce new shipper antidumping and countervailing duty reviews and establishes criteria for identifying bona fide sales by a new shipper

**Amendment #6 (Ryan (R-WI)) would strike title VII replace it with section 701 and 702:**

- Section 701 would strengthen the existing semi-annual currency report by including clear criteria on what constitutes currency manipulation and directs the administration to take specific steps if it finds that a country is manipulating its currency. The revised criterion closely tracks the existing International Monetary Fund standard for manipulation. If a trading partner is running a trade or current account imbalance, Treasury is required to either explain why this occurring and engage in more specific targeted consultations, including advising the country of possible remedial action. If targeted consultations do not resolve the issue, then Treasury is authorized to seek remedial action, including (1) restrictions on U.S. government financing; (2) additional efforts at the International Monetary Fund; or (3) a recommendation to the President to take action at the World Trade Organization or to restrict government procurement opportunities. The president would be required to take one or more of the following actions:

- prohibit the Overseas Private Investment Corporation from approving any new financing (including any insurance, reinsurance, or guarantee) with respect to a project located in that country on and after such date;
  - prohibit the federal government from procuring, or entering into any contract for the procurement of, goods or services from that country on and after such date (subject to certain exceptions);
  - instruct the United States Executive Director of the International Monetary Fund to call for additional rigorous surveillance of the macroeconomic and exchange rate policies of that country and, as appropriate, formal consultations on findings of currency manipulation; and
  - instruct the United States Trade Representative to take into account in assessing whether to enter into a bilateral or regional trade agreement with that country or to initiate or participate in negotiations with respect to a bilateral or regional trade agreement with that country, the extent to which that country has failed to adopt appropriate policies to correct the undervaluation and surpluses.
- Section 702 would create a nine-member advisory committee to advise Treasury on currency issues. The Senate, House, and Administration would each appoint members to the committee. The Advisory Committee on International Exchange Rate Policy would be responsible for advising the Secretary of the Treasury with respect to the impact of international exchange rates and financial policies on the economy of the United States. The committee would terminate on the date that is 2 years after the date of the bill's enactment unless renewed by the president for a subsequent 2-year period. [The Federal Advisory Committee Act](#) would apply to the committee. \$1,000,000 would be authorized to the Secretary of the Treasury for each fiscal year in which the committee is in effect.

**A House Ways and Means overview of the bill can be found [here](#).**

**COMMITTEE ACTION:** The bill was introduced on February 2, 2015 and was referred to the House Committee on Ways and Means. The bill was then passed by the House on February 12, 2015 by the yeas and nays: [279 - 137](#). The bill passed the Senate with an amendment to the title by yeay-nay vote: [78 – 20](#).

**ADMINISTRATION POSITION:** No statement of administration policy is available.

**CONSTITUTIONAL AUTHORITY:** Congress has the power to enact this legislation pursuant to the following: Clause 1 of Section 8 of Article I of the United States Constitution and Amendment XVI of the United States Constitution.

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